RECENT CASE NOTES

AGENCY—AGREEMENT WITH BROKER GIVING "EXCLUSIVE SALE."—The defendant signed a written agreement giving the plaintiff, a real estate broker, the "exclusive sale" of certain land for a specified period, promising to pay an agreed commission. The broker paid nothing for the promise nor did he in words agree to undertake the sale. But he did spend time and money trying to sell the property. Before he succeeded the defendant made the sale himself. Plaintiff sued for his commission. *Held,* that the plaintiff could not recover, since the promise was gratuitous. *Roberts v. Harrington* (1918, Wis.) 169 N. W. 603.

See COMMENTS, p. 575, *supra.*

BANKRUPTCY—INSURANCE POLICIES—RIGHTS OF TRUSTEE UNDER EXEMPTION STATUTES.—The bankrupt took out two policies of life insurance, one payable to his executors or assigns and the other to his brother and sister, with full power in the insured to change the beneficiaries. At the time of the bankruptcy his wife was the beneficiary of both policies, provided "she outlives" the insured, with power reserved in him to change the beneficiary or surrender the policies at any time, thus realizing their cash value. When the policies were demanded by his trustee in bankruptcy he contended that the beneficiary's interests could not be defeated, because of a Georgia statute which provides: "The assured may direct the money to be paid to his personal representatives or to his widow or to his children or to his assignee; and upon such direction given and assented to by the insurer no other person can defeat the same. But the assignment is good without such assent." *Held,* that the policies passed to the trustee. *Cohn v. Malone* (1919) 39 Sup. Ct. 141.

Where there is no local exemption statute, all the life and endowment policies of the bankrupt which have an actual cash value pass to the trustee. *Equitable Assurance Soc. v. Miller* (1911, C. C. A. 8th) 185 Fed. 98 (endowment); *Cohen v. Samuels* (1917) 245 U. S. 50, 38 Sup. Ct. 36 (life); see (1918) 27 YALE LAW JOURNAL, 403. And this is true although the insured has not reserved the power to change the beneficiary. *In re Boardman* (1900, D. Mass.) 103 Fed. 783 (endowment); *In re Coleman* (1905, C. C. A. 2d) 136 Fed. 818 (life). In a majority of jurisdictions statutes are in force which exempt from the claims of creditors insurance policies payable to the insured's wife or immediate relatives. Such policies do not pass to the trustee in bankruptcy, because of the exemption of sec. 6 of the Bankruptcy Act. And this section is not limited by sec. 70a. *Holden v. Stratton* (1905) 198 U. S. 202, 25 Sup. Ct. 656. Even when the insured has power to change the beneficiary, it is generally held that the policy is covered by such exemption. *In re Orear* (1911, C. C. A. 8th) 189 Fed. 888; *contra, In re Loveland* (1912, D. Mass.) 192 Fed. 1005, reversed on another point (1912, C. C. A. 1st) 200 Fed. 136. The minority view, as illustrated by the case last cited, reasons that the power to change the beneficiary gives the insured such dominion over the policy as to make it an asset of his estate. The principal case places a construction upon the Georgia statute which in effect adopts this view. If, as would seem to be true, the insured's "dominion over the policy" lies in his power to defeat the beneficiary's interest, the same result would logically be reached where the insured has power to so defeat it by surrendering the policy for cash. So it has been held. *In re White* (1909, C. C. A. 2d) 174 Fed. 333. It is made even clearer that this interest should pass as an asset, by the fact that the insured can assign it at will. See (1918) 27 YALE LAW JOURNAL, 1083. It is submitted, therefore, that if the minority doctrine be applied to such

statutes, they logically become of no effect whatever as regards the Bankruptcy Act. For no policy having any cash value, whether realizable through assignment, through change of beneficiary, or through surrender, even where there is no power to change the beneficiary, would be exempt. Such a result, it is submitted, defeats the purpose of the statute. It might, however, be avoided by making a distinction: exempting a policy which must be surrendered and cancelled to defeat the beneficiary, and not exempting one where he may be defeated and the policy still kept alive.

CONFLICT OF LAWS—FULL FAITH AND CREDIT—CONCLUSIVENESS OF RECITAL OF SERVICE IN STATE JUDGMENT.—An action was brought in Michigan on a Pennsylvania judgment. One of the defenses was that the defendant had neither been served with process in the Pennsylvania action nor been given any notice of the same. *Held,* that these facts, if true, constituted a defense. *Smithan v. Gray* (1918, Mich.) 168 N. W. 998.

See COMMENTS, p. 579, *supra.*

CONSTITUTIONAL LAW—RATE FIXING STATUTE—SUPERVENING UNCONSTITUTIONALITY—SUPERVENING BECAUSE OF CHANGING CONDITIONS.—The plaintiff, a corporation furnishing gas to the city of Albany, brought action for an injunction against the further enforcement of a rate-fixing statute passed in 1907. The corporation alleged that with the rise in the cost of gas-producing the rates had become confiscatory. The defendants maintained that the statute in question, having admittedly been constitutional when passed, could not later be attacked. *Held,* that the complaint stated a cause of action. (1919, N. Y.) 121 N. E. 772.

See COMMENTS, p. 592, *supra.*

CORPORATIONS—REINSTATEMENT AFTER FORFEITURE—LIABILITY OF DIRECTORS.—A New Jersey statute provided that a corporation failing to pay a tax assessed against it for two successive years should on proclamation by the governor forfeit all powers conferred upon it by law, which powers should be deemed thereafter "inoperative and void." The defendant was a director in the Crosthwaite and Cannon Company, which neglected to pay such tax; wherefore the governor proclaimed their charter void. The company continued to carry on its business and entered into a contract with the plaintiff who, alleging breach on the part of the corporation, brought suit for damages, but against the directors individually. The defendants set up that the governor, after his proclamation of cancellation, has issued an order reinstating the corporation in all its franchises *nunc pro tunc. Held,* that the plaintiff was not entitled to recover; one ground being that one who contracts with a corporation whose franchise has been terminated by the state for failure to pay a tax must be deemed to have contracted "under the implied agreement" that the corporation might be reinstated, and any individual liability of the directors thereby barred. *Held v. Crosthwaite* (1918, S. D. N. Y.) 60 N. Y. L. J. 661 (Nov. 27, 1918).

There seems no reason to question the soundness of the decision. It is at least doubtful whether the directors were ever liable. Forfeiture of a corporation's charter for misuser or non-user of corporate franchises can ordinarily take effect only on judgment in a proper *judicial* proceeding brought by the state. 7 R. C. L. 731; Clark & Marshall, *Corps.* sec. 213. And the state may waive the forfeiture. Clark, *Corps.* (3d ed., 1916) 306. The charter itself may indeed reserve to the *legislature* power to revoke. *Greenwood v. Union Freight Ry.* (1881) 105 U. S. 13. But it does not follow that such reservation is self-executory. *New York, etc. Co. v. Smith* (1896) 148 N. Y. 540, 42 N. E. 1088; and see 2 Morawetz, *Corps.* sec. 1006; 8 Am. St. Rep. 803, note. Even less will a *general statute* be necessarily self-executory, when it provides that non-compliance